C.J.'s Court

Criminal Jail Appeal No.115 of 2001

Newla alias Newal Singh ..... Appellant

Vs.

State of Uttaranchal ..... Respondent

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Hon.A.A.Desai,C.J.
Hon.M.C.Jain,J.

The second Additional Sessions Judge, Dehradun on the basis of testimony of P.w.1 Mona(prosecutrix) and her mother P.W.2 Sumitra Devi recorded the finding of conviction for the offence punishable u/s 376,I.P.C. against the applicant-accused for having committed rape on the prosecutrix,P.W.1 Mona on 10.04.2000 at about 11 p.m. in his own house. The conviction and sentence has been challenged by the appellant mainly on the ground that the appellant has been falsely implicated out of grievance or vengeance and secondly story as set up by the prosecution was improbable.

Having regard to the points as raised, we have examined the testimony of two witnesses,namely, P.W.1 Mona and P.W.2 Sumitra Devi and the record.

It is revealed from their testimony that prosecutrix Mona P.W.1 alongwith her two brothers on the day of incident at about 9.30 p.m. went to the house of the accused to witness the T.V.serial. After sometime, her brothers had left the place. Mona, who was a child of about 8-9 years as per medical report Ex.Ka.4 at the relevant time however, remained there. The accused gagged her mouthe and committed rape on her. She continued to lie in the house of the accused unconscious and left his house early in the morning and reached to the place of her parents. The incident was reported to P.W.2 Sumitra Devi. However, she lodged F.I.R. on 16.4.2000 at 11 a.m. vide Ex.Ka.1

With the assistance of landlord counsel, we have examined the testimony of doctor as well as medical report which is marked as Ex.Ka.2 and supplementary report Ex.Ka.3 with X-ray report ex.Ka.4. The medical evidence has disclosed that there had been a laceration on vagina which was in the process of healing. It is particularly reported that hymen was torn. The medical evidence render corroboration to the testimony of P.W.1 Mona and P.W.2 Sumitra Devi coupled with Ex.Ka.1 which is first information report. The prosecution thus substantiated the charge beyond spell of doubt.

The learned counsel for the appellant Mr. Mangal Singh Chauhan tried to assail the prosecution case on the ground that there is inordinate delay in filing the first information report and that creates a serious doubt about the genuineness of the claim of the prose-curtix. We have also examined this aspect in great detailed.

Undisputedly, P.W.2 Sumitra Devi is a rustic lady from a village. Her husband moves outside for the livelihood as a daily wage earner. At the relevant time, he was not available at home. Therefore, she could not immediately take her daughter to the police station or for medial examination. The delay as occurred in lodging the F.I.R. has sufficiently been explained by her testimony as well as in the F.I.R. The defence, therefore, could not avail of anything to discredit the claim of the prosecution.

Mr. Mangli Singh Chauhan, learned counsel for the appellant, after going through the record, mainly, the principally urged that the story of the prosecution is concocted and appellant was falsely implicated. According to the learned counsel for the defence, P.W.2 Sumitra Devi, mother of the prosecutrix, was a lady of easy virtue. At some other occasion, the appellant reported about her activities to her husband. Because

of that event, the mother of proseuctrix was cherishing vengeance and she gave a threat to implicate the accused. He tried to suggest this defence in his examination u/s 313 Cr.P.c. In support of the defence, he has examined D.W.1 Karan Bahadur and D.W.2 Shiv Bahadur. They tried to depose in the same tune.

We examined their testimony. What is fatal for the defence is that the defence as set up was not put to P.W.2 Sumitra Devi while she was under cross-examination of the defence. The defence is palpably false and set up as an after- thought. Even otherwise, the defence has not brought anything in cross examination to discredit the testimony of P.W.1 and P.W.2.

Moreover, the mother will not hatch a plan to implicte somebody out of vengeance by making assault on vagina of her daughter or will make such an attempt resulting in rupture of hymen. The defence is, therefore, totally baseless.

In the result, we do not see any merit in the contention. The conviction as recorded does not suffer from any infirmity.

One sentence, learned counsel for the appellant Sri Mangal Singh Chauhan urged that at the relevant time the accused was young boy of 19 years and taking education. He further urged that the act involved is a madness of a youth. Therefore, he deserves leniency from this Court. We also heard learned prosecutor for quite sometime on this aspect. The learned prosecutor has pointed out that whoever commits rape on a minor girl less than 12 years, minimum sentence prescribbed is ten years and maximum is life imprisonment. The learned Additional Sessions Judge has awarded the sentence of ten years R.I. However, it being minimum even after taking lenient view, it can not be further reduced.

In our considered view, following order, having/

regard to the circumstan-ces and age of the deceased. Will meet the ends of justice:

ORDER

The appeal is dismissed, conviction as recorded is maintained. Sentence of 10 years R.I. as awarded is hereby confirmed. However, we reduce the fine as imposed of Rs.10,000/- to Rs. 5000/-. Out of the fine, if revocered, Rs.4000/- be paid to the parents of the prosecutrix. In case of default in payment of fine, the appellant shall suffer further R.I. for a period of six months instead of one year as awarded by the learned Addl. Sessions Judge.

The accused-appellant is already in jail. He shall serve out the sentence as not awarded.

Sri Mangal Singh Chauhan, who appeared for the accused as amicus curiae be paid Rs.3000/- as his remuneration from the funds of the State Government.

Let a copy of the judgment alongwith record of the case be immediately sent down to the Court below for needful compliance under intimation to this Court within two months positively.

(M.C.Jain, J.) **(A.A.Desai, C.J.)**

Dt. 23.8.2001

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